

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE POKÉMON COMPANY
INTERNATIONAL, INC.,

Plaintiff,

v.

JON SAHAGIAN; DOES 1-5,

Defendants.

No. 2:15-cv-00866

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

The Pokémon Company International, Inc. (“TPCi”) brings this action against Jon Sahagian, the owner and operator of the web site located at www.pokebeach.com (the “PokéBeach Site”), and Does 1-5 (collectively, “Defendants”), alleging copyright infringement, contributory copyright infringement and violation of provisions of the Digital Millennium Copyright Act which prohibit the provision and distribution of false copyright management information. Defendants’ copying, reproduction, display, and distribution of TPCi’s copyrighted characters and images on the PokéBeach Site and in connection with TCG One, an unauthorized online Pokémon trading card game developed and operated by Defendants, infringe TPCi’s intellectual property rights. Accordingly, TPCi seeks damages, injunctive relief, and attorneys’ fees.

THE PARTIES

1
2 1. Plaintiff TPCi is a Delaware corporation with its principal place of business at
3 601 108th Ave. NE, Suite 1600, Bellevue, Washington 98004.

4 2. Upon information and belief, Defendant Jon Sahagian (“Sahagian”), aka “Water
5 Pokémon Master,” is an individual residing in the State of California, who owns and operates the
6 PokéBeach Site, which exclusively hosts and operates the TCG One game.

7 3. The true names and capacities, whether individual, corporate, associate,
8 partnership or otherwise, of defendants named herein as Does 1 through 5, inclusive, are
9 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Upon
10 information and belief, each of the Defendants designated herein as Does 1 through 5, inclusive,
11 is legally responsible in some manner for the events and happenings herein referred to and
12 described. Plaintiff will seek leave of court to amend this complaint to show the true names and
13 capacities of the Doe Defendants when the same have been ascertained.

14 **JURISDICTION AND VENUE**

15 4. This Court has subject-matter jurisdiction over this action under 28 U.S.C.
16 §§ 1331 and 1338 because this action alleges violations of the Copyright Act, 17 U.S.C. § 101, *et*
17 *seq.*

18 5. This Court has personal jurisdiction over Defendant Sahagian because Sahagian is
19 the owner and operator of the nationally accessible PokéBeach Site. On information and belief,
20 the PokéBeach Site, and the TCG One game, are actively marketed to and used by persons
21 residing in the State of Washington, and paid subscription services are made available to persons
22 residing in the State of Washington. Additionally, Sahagian has on several occasions
23 communicated with TPCi personnel in the State of Washington in the course of perpetrating the
24 infringements alleged herein. This Court also has personal jurisdiction over all Defendants
25 because this dispute arises from Defendants’ intentionally tortious conduct—namely, willfully
26 and deliberately infringing TPCi’s intellectual property in connection with the PokéBeach Site
27 and the TCG One game—such that Defendants have specifically targeted and injured TPCi, who

resides in this judicial district.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and has harmed TPCi's intellectual property located in this judicial district.

FACTUAL ALLEGATIONS

The Offline Pokémon Trading Card Game

7. TPCi manufactures, markets, and distributes a variety of entertainment products, including movies, television shows, games, and toys throughout the United States and around the world.

8. One pillar of TPCi's business is the popular Pokémon trading card game (the "Pokémon TCG"), first introduced more than a decade ago. In the Pokémon TCG, each player acts in the role of a "Trainer" and uses a number of different types of cards to play the game, including Pokémon cards, which represent particular characters known as "Pokémon." Players use their Pokémon to battle the Pokémon of other Trainers. Between games, players collect cards to assemble their optimal decks.

9. Each Pokémon trading card contains original artwork depicting a Pokémon character, the character's powers and abilities, a description of the character, and other data indicating the card's value. Below is a copy of a card depicting one version of the iconic character Pikachu:



10. TPCi owns exclusive rights under the Copyright Act for the artwork and characters that TPCi has developed over thousands of trading cards for more than a decade, and TPCi registers the works with the United States Copyright Office. Attached as Exhibit A is a selection of TPCi's copyrights in these visual works and the corresponding registration numbers (collectively, "the Pokémon Works").

11. TPCi products, and specifically the Pokémon TCG expansion sets, are rolled out to significant fanfare and marketed to millions of users in the United States and around the world. In 2014 alone, TPCi invested more than \$6 million in domestic advertising and promotions associated with the Pokémon TCG.

The Pokémon Trading Card Game Online

12. TPCi has also developed and released Pokémon TCG Online ("PTCGO"), an online version of the Pokémon TCG, which is made available through TPCi's website. An image captured from the PTCGO follows:



13. Users download TPCi software in order to play the PTCGO. While users can engage in some basic play of the PTCGO for free as a guest, players typically register to create a

TPCi account and purchase physical TCG products from TPCi, including physical trading cards. Doing so allows users to obtain codes that enable them to acquire additional digital cards, decks and customization items for use within the PTCGO, as well as participate in daily challenges and tournaments to obtain rewards. The PTCGO is integrated with the TPCi's website and online store, making it easy to make purchases and redeem codes. As a result, the PTCGO is a strong driver of sales of Pokémon merchandise. The PTCGO is a key part of the overall user experience.

14. In 2015, the PTCGO has averaged more than 100,000 games started per day, and through April 2015, more than 1,300,000 codes were redeemed in connection with PTCGO play.

The Pokémon Universe

15. TPCi features the Pokémon characters not only in its vastly successful Trading Card Game, but also in a wide variety of clothing, books, toys, and other merchandise that TPCi creates and sells, both directly and through a world-wide network of licensees. TPCi's domestic sales of Pokémon merchandise exceeded \$6 million in 2014 alone.

16. The iconic characters and comprehensive Pokémon world that appear in the Pokémon TCG also provide a rich source of content for the 18 seasons of TPCi's long-running televised series of Pokémon cartoons and 17 full-length animated motion pictures.

17. Through appearances in the Pokémon television programs and films, together with years of development through the Pokémon TCG and Pokémon merchandise, several Pokémon characters have emerged as icons and fan favorites.

18. Pikachu, the most recognizable Pokémon within the Pokémon universe, has become TPCi's principal mascot for the company and the Pokémon brand world-wide. Pikachu is a central character in the Pokémon television series and Pokémon films. Similarly, Pikachu appears in the vast majority of TPCi's Pokémon game content, either as a central or incidental character. Pikachu appears on numerous cards in the Pokémon TCG, and is featured in or around the branding for championship tournaments and other events that TPCi organizes with respect to the Pokémon TCG. TPCi's prominent use of Pikachu has generated enormous consumer

recognition. Another example of the many Pikachu TCG cards is shown below:



19. Charizard, another Pokémon character, has also generated a strong following among fans since it was first featured in a wide variety of early Pokémon media and products. Charizard regularly features in the Pokémon TCG, and a Charizard card remains the most coveted card for collectors. TPCi has featured Charizard in or around the branding for championship tournaments and other events that TPCi organizes with respect to the Pokémon TCG. An example of a Charizard TCG card appears below:



20. Mewtwo is another of the most popular Pokémon. Mewtwo is also regularly featured in the Pokémon TCG and in various media and products. Below is an image depicting a Mewtwo TCG card:



21. Pikachu, Charizard, and Mewtwo each demonstrate how Pokémon characters cultivate appeal among Pokémon fans and emerge as central elements of the Pokémon TCG and for the designs that TPCi selects for its Pokémon merchandise. They are just three of the more than 700 Pokémon which populate the Pokémon universe.

“Water Pokémon Master” And The PokéBeach Site

22. Defendant Sahagian, using the online name “Water Pokémon Master,” is the owner and operator of the PokéBeach Site, which is self-described as the “Ultimate Pokémon Fansite.”

23. The PokéBeach Site is highly interactive, allowing users to register to create a PokéBeach account and participate in forums and chat rooms where they can communicate with PokéBeach staff and other users.

24. Additionally, the PokéBeach Site offers an “Article Program” featuring “weekly articles analyzing the current metagame and latest decks” published by the “Pokémon TCG’s most accomplished players.” Weekly, monthly and quarterly subscriptions to “Premium articles”

are also offered for purchase.

25. The “Activities” section of the PokéBeach Site offers access to “PokéBeach Tournaments & Activities” and to “Pokémon Showdown,” a “Pokémon battle simulator that lets you build Pokémon teams and battle other players.”

26. An entire section of the PokéBeach Site is devoted to the Pokémon TCG. Included within that section is a category for, among other things, “TCG Sets & Card Scans,” including high-resolution scanned images of cards from TPCi’s Pokémon TCG for “Standard Sets,” “Expanded Sets,” “Unlimited Sets,” and “Promos/Misc.” The “TCG Sets & Card Scans” section of the PokéBeach Site contains scans of all or nearly all of the Pokémon TCG cards that have been created.

27. In May 2015, Sahagian made significant changes to the PokéBeach Site, introducing a number of features which specifically exploit TPCi’s intellectual property.

28. In announcing the features of the revamped PokéBeach Site, Sahagian boasted about the breadth of the card scans feature:

The site now features a totally awesome card search that lets you look up any card on the fly! You can also see information about the card, if the card is legal in Standard or Expanded, how many times it’s been reprinted, links to what it was reprinted from, any conditional notes for using the card, links to buy the cards (which help support the site), and a couple of other features. . . .

. . . .

The listings [of card scans] contain every possible card you can use in your decks, even old cards that are still legal (such as Potion). You can also filter the cards in various ways[.] It’s an invaluable resource to any player!

(<http://www.pokebeach.com/2015/05/welcome-to-the-new-pokebeach/>.)

29. The PokéBeach Site staff even includes a dedicated “Card Scanner” and three “Scan Editors,” including “Water Pokémon Master” (aka Sahagian). And in his May 2015 announcement touting the “new” PokéBeach Site, Sahagian emphasized the improved quality of the trading card scans:

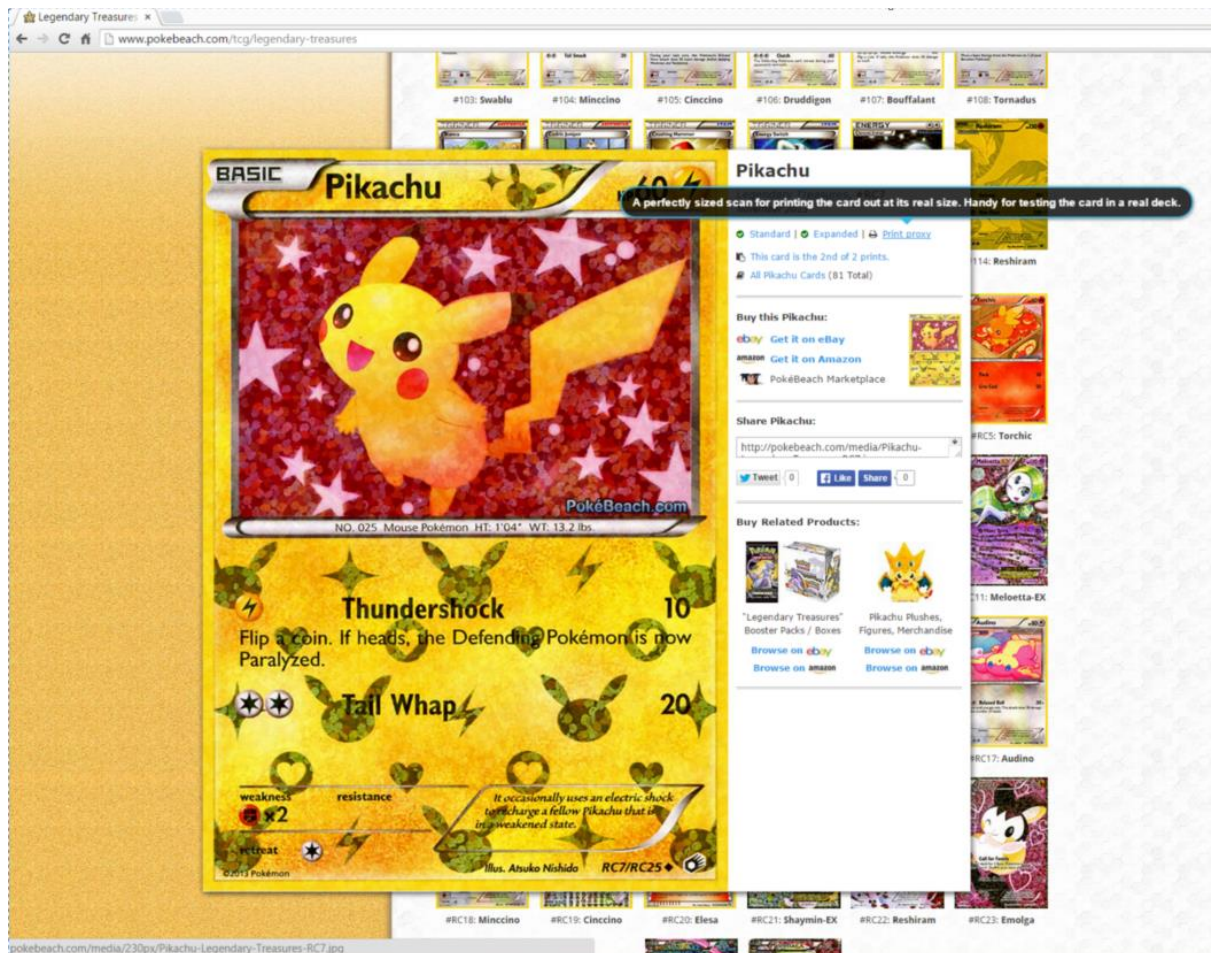
All of the scan pages have totally been redone to show card thumbnails, which you can then open to see information about the card.

....

Shakespeare, our card scanner since the early 2000s, has also rescanned his entire collection using Dolby THX HD 5.1 SSD Hokie Pokéy technology. The scans are even higher quality than before! We are still editing most of the scans, but the most recent sets are using the newer images. Sets using the older scans have all been reprocessed to be larger than before.

(Id.)

30. Clicking on any of the images of cards in the “TCG Sets & Card Scans” category displays a larger scanned image of the card. Following is an example of a scanned image of a card from the “TCG Sets & Card Scans” category of the PokéBeach Site featuring a Pikachu card:



31. As the above image illustrates, an informational box to the right of the scanned image includes, among other things, a “Print proxy” option, which is described on the PokéBeach Site as a “perfectly sized scan for printing the card out at its real size. Handy for testing the card in a real deck.”

32. As can also be seen in the image above, links to third-party retailers of Pokémon merchandise are also displayed in the informational box that appears to the right of the card scans. Numerous other links to third-party retailers appear elsewhere on the PokéBeach Site as well. These links generate revenue for the PokéBeach Site. (See May 2015 announcement, above (paragraph 28), indicating that purchases by PokéBeach Site users “help support the site.”)

33. The scanned cards also feature a “PokéBeach.com” watermark that has been added at the bottom of the drawing on the cards, an example of which is illustrated below.



Defendants' Infringing TCG One Game

34. In May 2015, Sahagian also announced the debut of “TCG One” on the PokéBeach Site, described as “a powerful TCG simulator that lets you build decks, battle others, and so much more!”

35. According to the PokéBeach Site, TCG One is “[h]osted exclusively by” and “fully integrated into” the PokéBeach Site, and was created by “Axpendifx,” who is identified as a member of the “Notable PokéBeach Staff.”

36. The PokéBeach Site’s “TCG One Guide” describes TCG One as follows:

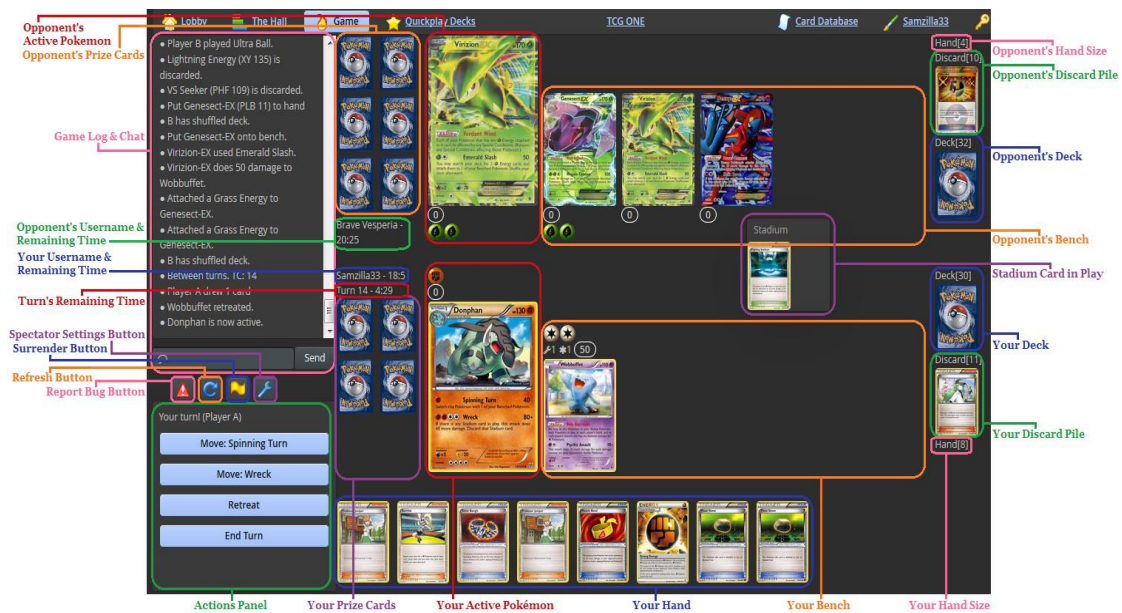
Bursting at the seam with features, you can build decks out of all available cards, use pre-existing decks built by other members, chat with players, and even play in a “Career” mode where you start with a basic deck and earn cards as you win matches. The simulator is a great way to practice for real tournaments and is especially helpful for players who want to learn how to play the TCG! The program even has old cards programmed into it, meaning you can play with all your classic favorites . . . and under the formats and rules of their time!

(<http://www.pokebeach.com/tcg-one-guide>.)

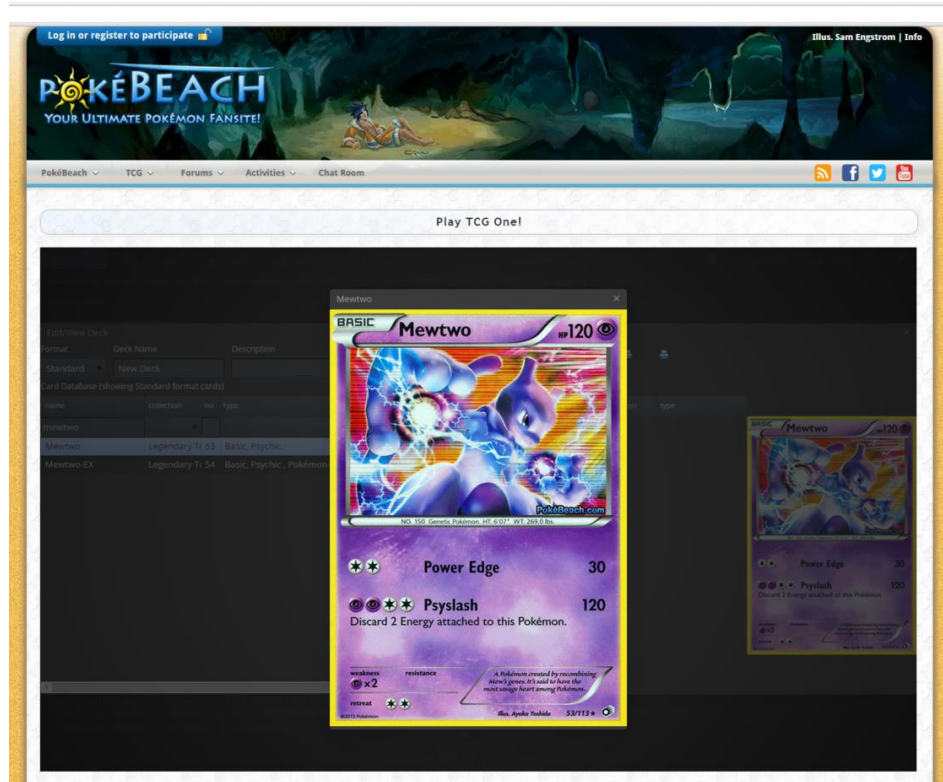
37. While TCG One is marketed as a way to learn or simulate play of the Pokémon TCG, in reality, it is merely an infringing version of the PTCGO, including infringing reproductions of TPCi’s Pokémon TCG cards. Indeed, the PokéBeach Site’s “TCG One Guide” equates the TCG One game with the official Pokémon online trading card game, noting that users can also use “Pokémon’s official simulator, ‘Pokémon Trading Card Game Online.’” In addition to being unauthorized, TCG One does not encourage players to purchase physical Pokémon merchandise in order to acquire additional digital cards, decks and customization items for use within TCG One. Such items are not integrated into TCG One, thus resulting in a sub-par user experience.

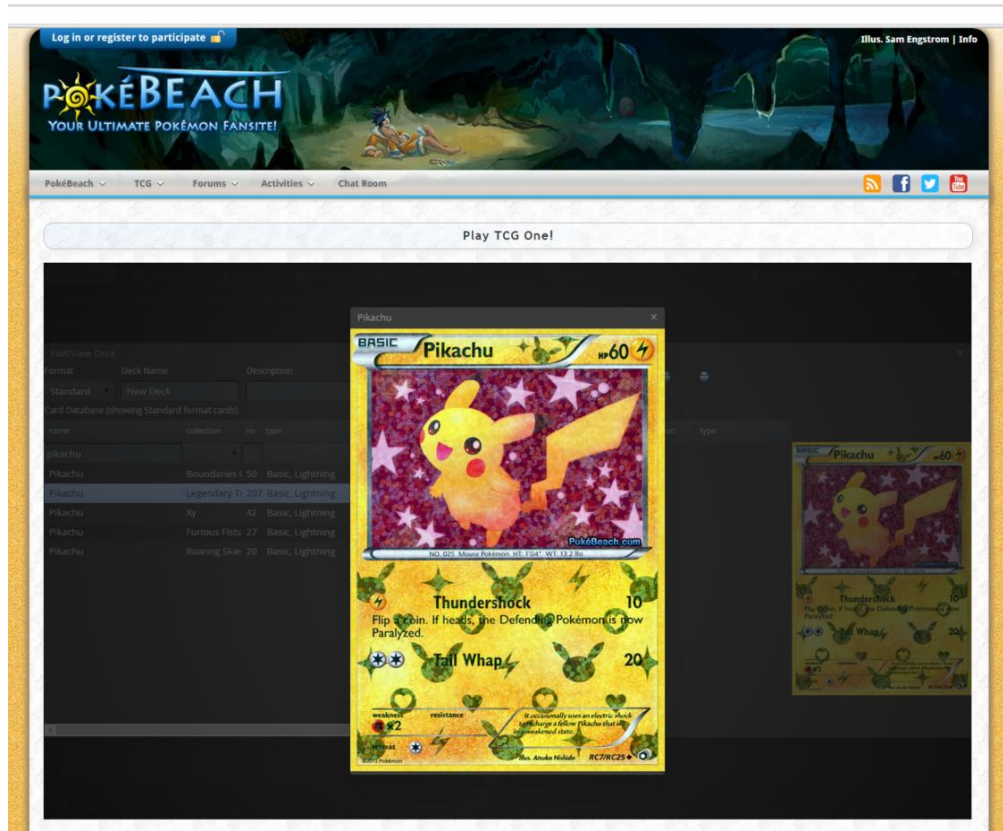
38. Additionally, in a post on the PokéBeach Site by self-described TCG One creator “Axpendifx” available at <http://www.pokebeach.com/forums/threads/tcg-one-general-discussion.114480/>, he describes the features of TCG One, including “[r]eal and big card images,” and lists the currently available card sets, concluding by stating that “[i]t means you can select any card in these sets and play like ptcgo!”

39. TCG One features full-color scanned images of the Pokémon trading cards (some if not all of which bear the “PokéBeach.com” watermark) as illustrated in the following image from the PokéBeach Site’s “TCG One Guide”:



40. Additional images from within the TCG One, displaying reproductions of TPCi's Pokémon TCG cards referenced in paragraphs 18 and 20, above, are shown below:





FIRST CAUSE OF ACTION

(Copyright Infringement, 17 U.S.C. § 101, *et seq.*)

(Against All Defendants)

41. TPCi realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 40 above.

42. Each of the Pokémon Works constitutes an original work of authorship and copyrightable subject matter under the laws of the United States.

43. TPCi is the sole owner of all exclusive rights in and to the Pokémon Works and the corresponding Certificates of Registration.

44. As described herein, Defendants have copied, created derivative works from, distributed copies to the public, and/or displayed publicly Pokémon Works in connection with the PokéBeach Site and/or the TCG One game without the consent or authority of TPCi, thereby directly infringing TPCi's exclusive rights under the Copyright Act.

1 45. The foregoing acts of Defendants constitute infringement of TPCi's exclusive
2 rights, in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.

3 46. Defendants' actions were and are intentional, willful, wanton, and performed in
4 disregard of TPCi's rights.

5 47. TPCi is entitled to injunctive relief pursuant to 17 U.S.C. § 502. TPCi has no
6 adequate remedy at law for Defendants' wrongful conduct because, among other things,
7 (a) TPCi's copyrights are unique and valuable property which have no readily determinable
8 market value, (b) Defendants' continued infringement harms TPCi such that TPCi could not be
9 made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting
10 damage to TPCi, is continuing and escalating.

11 48. TPCi has been and will continue to be damaged, and Defendants have been
12 unjustly enriched, by Defendants' unlawful infringement of TPCi's copyrights in an amount to
13 be proven at trial.

14 49. Alternatively, TPCi is entitled to statutory damages under 17 U.S.C. § 504(c).

15 50. In addition, for the reasons set forth above, the award of statutory damages should
16 be enhanced in accordance with 17 U.S.C. § 504(c)(2).

17 51. TPCi is also entitled to recover its attorneys' fees and costs of suit pursuant to 17
18 U.S.C. § 505.

19 **SECOND CAUSE OF ACTION**
20 **(Contributory Copyright Infringement)**
21 **(Against All Defendants)**

22 52. TPCi realleges and incorporates by reference all of the allegations set forth in
23 paragraphs 1 through 51 above.

24 53. As described herein, Defendants have copied, reproduced, prepared derivative
25 works from, distributed to the public and/or publicly displayed, or otherwise infringed the
26 Pokémon Works without TPCi's consent, thereby directly infringing TPCi's copyrights.

27 54. Defendants have engaged and continue to engage in the business of knowingly

1 and systematically inducing, causing, and/or materially contributing to the unauthorized copying,
2 reproduction, preparation of derivative works from, distribution of copies to the public and/or
3 public display of the Pokémon Works in connection with the PokéBeach Site and/or TCG One
4 and thus to the direct infringement of the Pokémon Works.

5 55. Defendants' conduct constitutes contributory infringement of TPCi's copyrights
6 and exclusive rights under copyright in the Pokémon Works in violation of Sections 106 and 501
7 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

8 56. Defendants' actions were and are intentional, willful, wanton and performed in
9 disregard of TPCi's rights.

10 57. TPCi has been and will continue to be damaged, and Defendants have been
11 unjustly enriched, by Defendants' unlawful infringement of the Pokémon Works in an amount to
12 be proven at trial.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of the DMCA—Provision of False Copyright Management Information)**

15 **(Against Defendant Jon Sahagian)**

16 58. TPCi realleges and incorporates by reference all of the allegations set forth in
17 paragraphs 1 through 57 above.

18 59. As described herein, Defendant Sahagian has placed his own watermark,
19 purporting to be a copyright notice, on infringing copies of the Pokémon Works.

20 60. In so doing, Defendant Sahagian has knowingly, and with the intent to induce,
21 enable, facilitate or conceal infringement, provided copyright management information that is
22 false, in violation of 17 U.S.C. § 1202.

23 61. Defendant Sahagian's provision of false copyright management information with
24 respect to infringing copies of TPCi's Pokémon Works was and is willful and intentional, and
25 executed with full knowledge of TPCi's rights and in disregard of those rights.

26 62. TPCi is entitled to recover actual damages, or at its election, statutory damages
27 under 17 U.S.C. § 1203(c).

PRAYER FOR RELIEF

WHEREFORE, TPCi respectfully requests that judgment be entered in its favor and against Defendants, as follows:

1. A permanent injunction enjoining and restraining Defendants, and all persons or entities acting in concert with them, during the pendency of this action and thereafter perpetually from (a) copying, creating derivative works from, distributing copies of, and/or publicly displaying the Pokémon Works, and (b) operating, hosting, or otherwise making available to the public the TCG One game, and (c) providing and distributing false copyright management information;

2. An award of damages, including, but not limited to, compensatory, statutory, and punitive damages, as permitted by law;

3. An award to TPCi of its costs of suit, including, but not limited to, reasonable attorneys' fees, as permitted by law;

4. An order under 17 U.S.C. § 503(b) requiring Defendants (A) to impound, on such terms as the Court may deem reasonable, (i) all copies claimed to have been made or used in violation of the exclusive rights of TPCi; (ii) all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced; and (iii) of records documenting the manufacture, sale, or receipt of things involved in any such violation, provided that any records seized shall be taken into the custody of the Court; and (B) to destroy, or otherwise reasonably dispose of, all copies found to have been made or used in violation of TPCi's exclusive rights, and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced; and

5. Such other relief as the Court deems just and proper.

//

//

//

//

1 DATED: June 1, 2015

Respectfully Submitted,

2 FOCAL PLLC

3 By: s/ Venkat Balasubramani

4 Venkat Balasubramani, WSBA #28269

s/ Sean M. McChesney

5 Sean M. McChesney, WSBA #36973

6 800 Fifth Avenue, Suite 4100

7 Seattle, WA 98136

8 Tel: (206) 529-4827

9 Fax: (206) 260-3966

10 venkat@focallaw.com

11 sean@focallaw.com

12 Attorneys for Plaintiff,

13 THE POKÉMON COMPANY

14 INTERNATIONAL, INC.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TPCi demands trial by jury in this action of all issues so triable.

DATED: June 1, 2015

FOCAL PLLC

By: s/ Venkat Balasubramani
Venkat Balasubramani, WSBA #28269